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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: All Points International, Inc.

File: B-260134

Date: May 22, 1995

Patrick J. Greene, Jr., Peckar & Abramson, for the protester,
A. F. Thibodeau, Esq., and Cynthia S. Guill, Esq.,
Department of the Navy, for the agency.
Aldo A. Benesjam, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protest challenging the sole-source award of contracts for the purchase/lease of tension fabric structures is denied where the contracting agency reasonably determined that only one known firm was capable of meeting the urgent requirement related to the growing Cuban and Haitian refugee population at the U.S. Naval Facility, Guantanamo Bay, Cuba, and the urgency was not caused by the agency's lack of advance planning.

DECISION

All Points International, Inc. protests the Department of the Navy's decision to award two contracts (N47408-95-C-0102 and N47408-95-C-0103) on a sole-source basis to Sprung Instant Structures, Inc., for the purchase and lease of tension fabric structures. All Points contends that the awards were the result of the agency's lack of advance planning and, therefore, could not be justified pursuant to 10 U.S.C. § 2304(f)(5)(A) (1994).

We deny the protest.

BACKGROUND

The structures are to be used at the U.S. Naval Facility, Guantanamo Bay, Cuba. As of late 1994, several thousand Haitian and Cuban refugees resided in facilities in Guantanamo Bay and in the Canal Zone, Panama. The refugees at the Canal Zone facility recently rioted to protest their conditions there. Out of concern for the refugees' safety and well-being, it was decided that the approximately 8,000 refugees in Panama would be transferred to the Guantanamo Bay facility. As a result, the number of refugees residing

in Guantanamo was expected to grow to an estimated 30,000 by February 1995. This procurement was undertaken as part of a larger effort, identified as the "Quality of Life" project, to upgrade and prepare the Guantanamo Bay facility to accommodate the additional refugees.

In late 1994, the Navy was tasked with making improvements to the facility "as expeditiously as possible." Based on a survey of the Guantanamo Bay facility, the Navy settled on a design that required approximately 74 tension fabric structures of different sizes and for various uses. On January 10, 1995, in a message to the Second Naval Construction Brigade (2nd NCB), the Commander in Chief of the Atlantic Fleet outlined different procurement approaches (including purchasing and leasing) that could be used to obtain the required structures. That message was forwarded to the 20th Naval Construction Regiment (20th NCR), which had been tasked with conducting the procurement. At that time, the Navy contemplated that the 20th NCR would conduct the procurement through the purchasing office at the Naval Construction Battalion Center, Gulfport, Mississippi (NCBC Gulfport). In order to accommodate the new arrivals, the structures had to be delivered to the Navy and deployed to Guantanamo in January 1995.

Although it appeared that the procurement was moving forward on schedule, on January 17, the contracting officer at NCBC Gulfport advised the 2nd NCB that the portion of the acquisition that contemplated leasing some of the structures exceeded her contracting authority. The 2nd NCB withdrew the procurement from the 20th NCR, and, since the refugees' arrival in Guantanamo was imminent, requested that the Naval Facilities Engineering Command, Contracts Office, Port Hueneme, California, execute the procurement on an expedited basis.

On January 19, the Port Hueneme contracting office contacted five vendors to inquire whether any of them could meet the compressed delivery schedule. Four of these firms were listed on a bidders list compiled by the Port Hueneme contracting office from a recent procurement for tension fabric structures conducted by that office. The name of the fifth vendor, Sprung Instant, was provided to the Port Hueneme office by the 20th NCR contracts office.¹ All Points was not contacted because the firm was not on the bidders list, and neither the 20th NCR nor the Port Hueneme contracting office was aware of the protester's interest in

¹On January 17 and 18, Sprung Instant had provided quotations to the 20th NCR contracts office for tension fabric structures.

the procurement.² On January 20, the agency awarded the contracts for the purchase and lease of the structures to Sprung Instant, the only known firm that could meet the urgent delivery schedule.³ This protest followed.⁴

DISCUSSION

An agency may use noncompetitive procedures to procure goods or services where the agency's needs are of such an unusual and compelling urgency that the government would be seriously injured if the agency is not permitted to limit the number of sources from which it solicits bids or proposals. 10 U.S.C. § 2304(c)(2); see also Federal Acquisition Regulation (FAR) § 6.302-2(a)(2). This authority is limited by 10 U.S.C. § 2304(e), which requires agencies to request offers from as many sources as practicable. See also FAR § 6.302-2(c)(2). An agency using the urgency exception may limit a procurement to only one firm if it reasonably determines that only that firm can properly perform the work in the available time. See Lundy Technical Center, Inc., 70 Comp. Gen. 588 (1991), 91-1 CPD ¶ 609. We will object to an agency's determination only where the decision lacks a reasonable basis. See Greenbrier Indus., Inc., B-241304, Jan. 30, 1991, 91-1 CPD ¶ 92.

Here, we find that the agency reasonably determined that urgent and compelling circumstances arising out of the "Quality of Life" project warranted the noncompetitive procurement. The record shows that the agency was given approximately 3 months to design and implement this phase of the "Quality of Life" improvements, requiring the agency to act expeditiously. Specifically, the 2nd NCB was tasked with the project in late 1994; funding was identified in

²The protester states that it supplied fabric frame structures for use at the Guantanamo Bay facility in September 1994. The protester concedes, however, that the actual purchase of those structures was accomplished through the Department of the Air Force, not the Navy.

³The Navy executed a justification and approval (J&A) for the sole-source awards as required by the Competition for Contracting Act of 1984. The J&A cites as authority unusual and compelling urgency in accordance with 10 U.S.C. § 2304(c)(2).

⁴On February 1, the Navy informed us that the head of the contracting activity determined pursuant to 31 U.S.C. § 3553(d)(2)(A)(ii) (1988), that urgent and compelling circumstances affecting the interests of the United States would not permit awaiting our decision, and authorized contract performance notwithstanding the protest.

January 1995; and the refugees from the Canal Zone facility were expected to arrive in Guantanamo in early February. The Navy explains that the structures had to be delivered to the Navy no later than January 30, with sufficient lead time to be transported to Guantanamo Bay and erected by early February to accommodate the new arrivals.


Except for its blanket statements that the Navy could have initiated the procurement earlier, the protester has not shown, and there is no evidence in the record, that given the limited amount of time available to upgrade the Guantanamo Bay facility, the Navy acted in less than an expeditious, diligent manner. Further, nothing in the record suggests that the decision to transfer 8,000 refugees to Guantanamo Bay--a decision involving the highest levels of government and several military and civilian agencies--was a foreseeable event over which the contracting activity had any control, or for which the Navy could have planned. The protester's contention that the urgency of the situation was created by the agency's lack of advance planning thus is without merit.

The protester points out that in November 1994, it provided engineering and pricing information concerning tension fabric structures to the Navy's Facilities and Engineering Command in Norfolk, Virginia, and expressed its interest in the procurement to a Navy official in NCBC Gulfport. The protester argues that since the Navy was aware of its interest and capabilities, it was unreasonable for the agency not to solicit an offer from All Points.

It is undisputed that during November 1994, All Points contacted Navy personnel involved in the early stages of planning and design of the improvements at Guantanamo. One individual is an architect with the Navy's Facilities and Engineering Command in Norfolk; the other is with the Navy's Project Support Office in NCBC Gulfport, the office responsible for packaging the plans and specifications for the procurement office. Neither of these individuals was responsible for any aspect of the source selection or for contract award. Further, All Points has presented no evidence to suggest that prior to award, anyone at NCBC Gulfport or the Port Hueneme contracting office was aware of

the firm's interest or capability to participate in the procurement. See Kahn Indus., Inc.; Midwest Dynamometer & Eng'g Co., B-251777; B-251777.2, May 3, 1993, 93-1 CPD ¶ 356.

The protest is denied.


For Robert P. Murphy
General Counsel